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OFFICE OF PETITIONS

Applicant: Kanemaru, et al.	: ON PETITION
Issue Date : Nov. 21, 2008	: 37 CFR 1.705(d)
Application No: 10/679,298	:
Patent No. 7,449,193	: REQUEST FOR RECON
Filed: October 7, 2003	: PATENT TERM
Attorney Docket: 053466-0372	: ADJUSTMENT

This is a decision on the petitions filed on January 5, 2009 and January 15, 2010 which are being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred and fifty-eight (158) days.

The request for reconsideration of patent term adjustment is **GRANTED-IN-PART**. The Office notes that this decision is based upon the petition filed on January 8, 2009 and NOT the petition filed on January 15, 2010 as the latter filed petition would have been deemed untimely. The PTA is 84 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e), paid on January, 2009. No additional fees are required.

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that in view of the decision in Wyeth, they are entitled to a total patent term adjustment of 158 days. Applicants believe that the amount of PTA is the following:

- 1) Non-overlapping PTA days of under "A" and "B" is 459
- 2) Applicant delay of 301 days

Total PTA of 158.

The Office has determined that the amount of "A" delay is 101 days. The amount of "B days" is 284 days. The "B delay is determined from the day after the 36 months, i.e., from October 8, 2006 until one day before the filing of an RCE or issue date, in this case the RCE was filed on September 28, 2007; hence the "B" period extends from October 8, 2006 until September 27, 2007 for a total of 355 days. However, pursuant to 37 CFR 1.703(b)(4) a reduction against B is for the period of 71 days beginning on the date of filing of the notice of appeal and ending on the date of the mailing of a non-final rejection on September 11, 2006. Accordingly, the "B" delay amounts to 284 days, $355 - 71 = 284$ days. None of the "A" delay overlaps with any of the "B" delay and accordingly the amount of non-overlapping PTA days is 385. The amount of applicant delay as stated by appellant is 301 days. Accordingly, the amount of PTA at the time of the issuance of the patent is eighty-four (84) days.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The applicant is giving **one month or thirty (30) days** whichever is longer to reply to this DECISION. After the response period has elapsed, the Office will *sua sponte* issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by eighty-six (84) days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office has assessed the \$200.00 request fee. No additional fees are required in this matter.

Telephone inquiries specific to this decision should be directed to Maria Nuzzolillo, Legal Advisor, at (571) 272-8150, or the undersigned at 571-272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

Day : Thursday

Date: 7/1/2010

Time: 12:30:37


PALM INTRANET
PTA Calculations for Application: 10/679298

Application Filing Date:	10/07/2003	PTO Delay (PTO):	365
Issue Date of Patent:	11/11/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	301
Post-Issue Petitions:	0	Total PTA (days):	84
PTO Delay Adjustment:	20		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	07/01/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	20		
84.5	10/22/2008	PTA 36 MONTHS	262		
84	11/11/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
83	10/15/2008	EXPORT TO FINAL DATA CAPTURE			
82	10/14/2008	DISPATCH TO FDC			
81	10/13/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
80	10/07/2008	ISSUE FEE PAYMENT VERIFIED			
79	10/07/2008	ISSUE FEE PAYMENT RECEIVED			
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75	07/08/2008	MAIL NOTICE OF ALLOWANCE	9		63
74	06/19/2008	ISSUE REVISION COMPLETED			
73	06/19/2008	DOCUMENT VERIFICATION			
72	06/19/2008	EXAMINER'S AMENDMENT COMMUNICATION			
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70	06/19/2008	NOTICE OF ALLOWABILITY			
65	02/29/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
64	04/02/2008	DATE FORWARDED TO EXAMINER			
63	02/29/2008	RESPONSE AFTER NON-FINAL ACTION		29	59
62	02/29/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
61	03/06/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
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60	02/27/2008	(PTOL - 413)			
59	10/31/2007	MAIL NON-FINAL REJECTION			
58	10/29/2007	NON-FINAL REJECTION			
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54	09/28/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		30	42
53	10/16/2007	DISPOSAL FOR A RCE / CPA / R129			
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42	05/29/2007	MAIL FINAL REJECTION (PTOL - 326)			
41	05/25/2007	FINAL REJECTION			
40	10/10/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
39	03/09/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
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35	03/09/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	10/27/2006	CASE DOCKETED TO EXAMINER IN GAU			
33.7	10/10/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	10/10/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	09/11/2006	MAIL NON-FINAL REJECTION			
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26	02/02/2006	MAIL FINAL REJECTION (PTOL - 326)			
25	01/05/2006	CERTIFIED TRANSLATION OF FOREIGN PRIORITY DOCUMENT			
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21	10/27/2005	RESPONSE AFTER NON-FINAL ACTION		92	19
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19	04/27/2005	MAIL NON-FINAL REJECTION			
18	04/25/2005	NON-FINAL REJECTION			
17	04/14/2005	DATE FORWARDED TO EXAMINER			
16	04/08/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
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14	03/09/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
13	09/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	10/07/2003	REFERENCE CAPTURE ON IDS			
11.7	10/07/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	10/07/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	10/07/2003	PRELIMINARY AMENDMENT			
9	10/07/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
8	09/28/2004	CASE DOCKETED TO EXAMINER IN GAU			
7	12/03/2003	APPLICATION RETURN FROM OIPE			
6	12/03/2003	APPLICATION RETURN TO OIPE			
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4	12/03/2003	APPLICATION IS NOW COMPLETE			
3	11/20/2003	CLEARED BY OIPE CSR			
2	11/16/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/07/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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